

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, JULY 12, 2012
APPROVED MINUTES**

Chairman John Ellis called the Gambling Commission meeting to order at 1:40 p.m. at the Embassy Suites in Tukwila and introduced the members present.

MEMBERS PRESENT: **Chair John Ellis**, Seattle
 Vice-Chair Mike Amos, Selah
 Commissioner Kelsey Gray, Spokane
 Senator Margarita Prentice, Renton
 Representative Gary Alexander, Olympia

STAFF: **Rick Day**, Director
 David Trujillo, Deputy Director
 Mark Harris, Assistant Director – Field Operations
 Amy Hunter, Administrator – Communications & Legal
 Callie Castillo, Assistant Attorney General
 Michelle Rancour, Administrative Assistant

Presentation: Senior Counsel, Assistant Attorney General Jerry Ackerman Retirement

Director Rick Day introduced Mr. Jerry Ackerman, former Senior Counsel and Assistant Attorney General for the Commission. He congratulated Mr. Ackerman on his retirement from state service on June 30, 2012, which included twelve plus years of experience supporting the Gambling Commission. In those years, he had provided counsel to the Commission, the staff, and served proudly as part of the Commission's tribal/state negotiation team. Director Day acknowledged Mr. Ackerman's many accomplishments including the negotiation of the Spokane Compact, the X2 Agreement, and his two consecutive unanimous wins at the Supreme Court.

Chair Ellis thanked Mr. Ackerman for his service as the counsel for the State Gambling Commission for the past twelve years.

Mr. Ackerman thanked all the members of the Commission and the Gambling Commission staff. He sincerely appreciated all of the Commission's help, support, and friendship over the years, and he regards the Commission as the finest client that he had represented in his public service career. He also thanked the members of the industry and those who attend the Commission meetings. He introduced his successor, Assistant Attorney General Callie Castillo. He had previously worked with AAG Castillo in the Government Compliance and Enforcement Division where she acted as appellate advisor in their Division. He was sure she would be a real asset to the Commission.

Agenda Review/Director's Report

Director Day briefly reviewed the agenda. He requested removing item number 10b), Mr. Michiko McBride, from the default list as staff need to review some process relative to Mr. McBride and determine whether it should be brought back later. Director Day indicated the Commission currently plans to have a two-day meeting in August at the Heathman Lodge in Vancouver. He encouraged everyone to check our agency's website for the day, location, and times as the August meeting date approaches.

Director Day drew attention to the newly initiated government-to-government outreach through contact with the tribes, and his arrangements to attend Tribal Gaming Commission meetings for the 22 gaming tribes. The purpose is to understand tribal regulatory operations better, to listen, and to meet the Commissioners. He pointed out the professionalism, interest, and dedication to the work was apparent as he listened to the Tribal Commissioners. Following each of his visits, Chairman Ellis has sent a letter thanking the Tribal Chair for their hospitality. Included in the agenda packet is a copy of the letter being sent to thank each one of the Tribal Commissions and Tribe's Chair. Director Day reported there was no new congressional information. The statewide Rules Moratorium Report from the Governor's office that was included in November was provided so that the Commissioners could see what came out on a statewide basis.

Budget Fiscal Year 2013 Adjustments and Preliminary Fiscal Year 2013-2015 *(PowerPoint Presentation)*

Ms. Judy Pittelkau reported the purpose of this presentation was to ask for the Commission's approval for the proposed staff changes to the Fiscal Year (FY) 2013 budget that was approved in August of 2011, and to update the Commissioners on changes that were implemented by the Legislature during the 2012 legislative session. Staff would also ask for feedback and direction on the preliminary budget for the 2013-2015 biennium that will be presented for approval at the August Commission meeting. The 2013-2015 biennium includes FY 2014 and 2015 dating from July 1, 2013, through June 30, 2015. The Commission is a non-appropriated agency that does not receive any general fund dollars but is expected to cover all of its costs through fees and other revenue sources. The Commission, or its duly authorized representative, authorizes the disbursements and no legislative appropriation is required. The Commission's powers and duties include ensuring that fees are adequate to cover all costs incurred by the agency's licensing and enforcement activities.

Ms. Pittelkau indicated in FY12 the punchboard/pull-tabs were the Commissions largest single source of revenue. Tribal regulation continues to be the second largest source, followed by the tribal certification and the house-banked card rooms. Actual revenues by month through May of 2012 range from a low of \$579,000 in October of 2011 to a high of \$1.8 million in December of 2011 were 4.7 percent below the estimates which includes the decline in active licenses. The actual decline in the active licenses and certifications from major sources of revenue between May of 2010 and May of 2012, and it appears that the number of licensees had begun to stabilize. Expenditure activity for FY12 through May showed the expenditures by month for the gambling revolving fund and the seizure fund. Staff had managed the agency's expenditures and full-time employees (FTE) in light of the reductions in revenue. The expenditures are below the

estimates, and salaries and benefits make up about 39 percent of the gap between estimated and actual expenditures. Vehicle purchases make up most of the rest of the gap and include a proviso that orders the Director of the Department of Enterprise Services to give written approval before any agency can make a passenger vehicle purchase. One of the criteria to surplus a vehicle that was being replaced was an increase required to the minimum mileage. The agency reduced the allotted vehicle purchases from ten to four vehicles for FY13, along with approximately \$13,000 in computer replacements gives us a savings of \$213,000.

Next Ms. Pittelkau reviewed the FTE levels by month, indicating the allotted level was 157 FTEs, and the actual level was about 147, which includes 145 FTEs in the gambling revolving fund and 2 FTEs in the federal seizure fund. The actual level does not include FTEs that were not utilized due to military leave, or for approved hires that have not been filled. This would bring us to about 151 FTEs. Because our revenue stream can't support the 157 allotted FTEs in future years, attrition and the use of seizure funds are allowing the agency to reduce staffing levels over a longer term. Staffs are predicting the Agency will lose seizure funds and would be operating solely out of the gambling revolving fund. The Gambling Commission's working capital balance was the result of managing revenue and expenditures and the use of seizure funds. Staff estimated the ending FY12 working capital balance to be around \$2.5 million. Legislative and proposed staff changes for FY13 allows the agency cost allocation model to ensure that recovered costs for the areas that are billed and the billing rate for FY13 should be finalized and issued around late August. The revised estimates do not include any new fees or potential fee increases. Therefore staff has not included any additional seizure funds in this budget. The revised revenue estimate for FY13 is a decrease of about \$330,000 from the estimate last year. Ms. Pittelkau reported in August of 2011 the Commission approved a FY13 budget of \$15.2 million and 154 FTEs. Every year staff reviews the agency's actual expenditures versus the allotments to see where adjustments can be made. During that process this year the agency was able to capture a savings of about \$79,000. The employer share for health care funding has been reduced \$50 per eligible employee per month, which gave the agency a savings of about \$94,000.

Staff is proposing the use of \$50,000 out of the state seizure funds in FY13 for the problem gambling education project, which is a media outreach campaign on underage gambling, illegal forms of gambling and problem gambling. The other adjustments in the gambling revolving account are differences between the estimated vacancy rate which was calculated on an average salary, and the actual cost of positions that have been identified. The \$6,000 in the federal seizure account is an adjustment to the lease costs. The 0.5 FTE reductions are due to the way that the state now calculates FTEs for commissioners, which is based on hours worked instead of the days worked.

Ms. Pittelkau indicated the effect of the proposed revisions on each of the account balances for FY13. In the gambling revolving fund an estimated beginning working capital balance of \$2.5 million, estimated revenues of \$12.9 million, and recommended expenditures of \$13.3 million. This would leave a projected ending working capital balance of \$2 million, which is below OFMs recommended working capital balance of two months worth of expenditures. The federal

seizure account has an estimated beginning balance of \$2.8 million, estimated interest of \$5,000 and recommended expenditures of \$1.6 million, leaving a projected balance of \$1.2 million at the end of FY13. The federal seizure account expenditures includes salaries, benefits, and other costs for one position, special agent communication charges, all agency facility costs, and law enforcement computer and vehicle replacements. The state seizure account has an estimated beginning balance of \$3 million, estimated interest of \$3,000, and a recommended expenditure of \$50,000, leaving a projected balance of \$2.9 million at the end of FY13. The industrial insurance premium refund account is based on the agency risk experience, and staffs are not anticipating any refund or expenditures during FY13.

Staff recommends approval of the revised FY13 budget of \$14,970,829 and 153.5 FTEs, and asks the Commission to take action on this recommendation.

Chair Ellis asked if there were any questions, there were none.

Commissioner Gray made a motion seconded by Commissioner Amos that the Commission approve the revised Fiscal Year 2013 Budget. Vote taken; the motion passed with three aye votes.

Ms. Pittelkau introduced a preview of the budget for the next biennium. The 2013-2015 Biennium is for FYs 2014 and 2015. There are several issues that have had an impact on the development of the 2013-2015 biennium budgets. The 3 percent salary reduction and the freeze on salaries are set to expire July 1, 2013. This will result in an increase of approximately \$1.5 million for existing staff salaries and benefits during the next biennium. The agency has to be able to cover these increases out of the gambling revolving account. Although the agency has approximately \$1.6 million in federal seizure funds, that will not be enough to cover all of the costs that the funds have covered in the recent years. Some of those costs will have to be covered by the gambling revolving account. Although staff expects revenues to stabilize, the agency will need to continue to reduce the FTEs as the gambling revolving account picks up those operating costs that were previously supported by the federal seizure funds. As the FTE levels are reduced, the agency will want to retain as many well-trained and very competent staff as possible. No new decision packages were introduced for the next biennium.

Ms. Pittelkau indicated the same criteria was used for estimating the revenues of \$26 million for the 2013-2015 biennium as staff did for the FY13 revenue estimates. This was included in the estimate updates presented in March. The Commission's cost allocation model ensures that the agency recover costs for the areas that are billed. Staff has not anticipated any new fees or fee increases, and no additional seizure funds are anticipated. The increase in the FY 2015 revenue is based on the projected opening of a tribal casino. If that doesn't happen, then revenue will be lower.

Chair Ellis asked which casino. **Ms. Pittelkau** replied it was the Cowlitz Indian Tribe.

Ms. Pittelkau then explained the adjusted FY13 budget of \$15 million is used as the base from which the adjustments are made for FY 2014 and 2015 preliminary budgets. In addition to restoring the 3 percent salary reduction for all staff and removing the salary freezes for a cost of \$1.5 million, the headquarters lease and all of the utility costs for about \$812,000 per year are transferred from the federal seizure account to the gambling revolving account. The salary and benefit costs for 15 FTEs at about \$1.2 million per year are transferred from the gambling revolving account to the state seizure account, and these transfers net to zero, so they have no impact on the proposed budget. Staff has figured adjustments for vehicle and computer replacements of \$339,000, phasing out 1 FTE that is currently funded with federal seizure funds of \$113,000 and 0.75 FTE, a planned vacancy savings of \$1.3 million and 6.25 FTEs, and adjusting rents and one-time costs of \$87,000, for a total reduction of \$322,000 and 7 FTEs. So the proposed budget for the 2013-2015 biennium is \$29,619,872 and 146.5 FTEs.

Estimated revenue and proposed expenditures on each of the account balances for FYs 2014 and 2015. The working capital balance in the gambling revolving account at the end of FY 2015 is estimated to be about \$2.4 million, which is in line with OFMs recommended working capital balance. The federal seizure funds will nearly be exhausted at the end of FY 2015. However there will be approximately \$500,000 in state seizures to help offset the reimbursable rates and costs in the following biennium. There are items that may affect the Commission's working capital balance. Gambling Commission revenues are cyclical while the expenditures are relatively flat. It is important to maintain a sufficient working capital balance to cover the periods of lower revenues. Commission revenues come from license fees and other revenue sources. The working capital balance gives staff time to respond to any changes or decreases and make reductions in agency expenditures. Increases in pension rates and other benefit adjustments can have a significant impact on the working capital balance. As the costs go up, state service agencies such as the Department of Enterprise Services and the Attorney General will pass the additional costs on to the agency for the services that staff provides. Like most agencies, salaries and benefits are the greatest expenditure item. Future salary and benefit increases have a significant impact on the agency's working capital balance, and Legislature makes the determination for increases for represented personnel as well as non-represented personnel. An adequate working capital balance provides the agency with the ability to pay for these items without immediate fee increases.

The Commission approves fee increases, but they now have to be ratified by the Legislature. This could cause future increases to be delayed or denied, which would result in revenue being lower than necessary to maintain an adequate working capital balance. Federal guidelines and state seizures require that seizure funds be accounted for separately and spent by the receiving agency for the gambling related law enforcement activity. These funds cannot be used to supplant other revenue sources. The seizure funds provide benefits to the tribes and the licensees. Because these funds help defray some costs to the agency, staff are able to delay potential fee increases. Therefore no fee increases are anticipated in the 2013-2015 biennium budgets. As an example, on this slide Commissioners can see the rate reductions for the FY 2012 billings. As previously noted, the billing rates for FY 2013 should be finalized and issued

by late August. Seizure funds will continue to help offset reimbursable rates and costs into the next biennium.

Ms. Pittelkau explained a comparison of the 2011-2013 biennium budget that was approved in August of 2011 and the preliminary proposed budget for the 2013-2015 biennium. The budget for the next biennium is approximately \$1 million and almost 9 FTE lower than the current budget, and FY 2012 through FY 2015 numbers are estimated using the budgets having been presented. The working capital balance declined significantly when the Legislature transferred from the gambling revolving fund to the state general fund approximately \$4.95 million between FYs 2002 and 2004. Since then staff have consistently worked to get the working capital balance down into ranges that will provide the agency with sufficient working capital balance to meet operating needs. As indicated the proposed budget for the 2013-2015 biennium brings the Commissions revenues and expenditures into line and provides for the required minimum working capital balance. Staff will be back in August to ask for the Commissioners approval of the budget for the 2013-2015 biennium.

Chair Ellis called for public comment.

Mr. Victor Mena, Washington Gold Coast Casinos, commented he thought it was an interesting discussion to talk about budgets, and the new biennium is coming up.. One of the topics that he wanted to raise was the new health care act that was basically passed through the Supreme Court. As that piece of legislation comes into play in the year 2014, it is going to have a significant impact to small business. And it could be an impact to small business to the point where it could shut down a lot of card rooms in the industry. Licensees are projecting that easily it could be an expense of \$10 to \$20,000 per month to one of these card rooms with the passage of this health care reform. Politically whether licensees support it or not has got no bearing. The issue was that there was possibly going to be a significant change in the industry, and not just the gambling industry, but all small businesses in the service area, anybody that has a restaurant, or a small facility. There is going to be a lot of ripple effects and the state and the federal level was going to have to take a look at that to see what type of solutions can help support small businesses of the future. Mr. Mena pointed out the rough numbers, without any data to base this, the sixty card rooms that are operating right now have seen a reduction of three card rooms since last May, basically a month-and-a-half, two months ago. Of the sixty that are left, it was very possible that the state could see twenty shut their doors. If twenty went away, and he operates ten, and in the ten the average employee count is one hundred thirty five per property, he would have one thousand three hundred fifty employees. He stated his properties range in facility size from four thousand all the way to twenty thousand square feet. This was just a sampling of the industry. But if the industry loses twenty card rooms at one hundred thirty five employees, the impact is going to be very significant to field operations in terms of operating budgets. This is something he thought that probably should be reviewed. He thought it was hard to say what the real impact would be because licensees do not know what was going to happen with this type of legislation. This was something that the industry licensees were trying to get prepared for, and see what that ramification will be long-term. He also thought the Commission probably should take a hard

look at as well because it does affect this January 1, 2014, which is six months into this new biennium.

Chair Ellis asked if Mr. Mena knew the status of pre-health care legislation. What was the standard approach within card rooms, and the kind of health care benefits, if any, that are offered to employees. **Mr. Mena** replied that it depends by company quite a bit, and the most basic structure in the industry was that salaried management is covered. As an average the hourly employees are probably not covered, but there are several card rooms that offer coverage to all of their staff members. His guess was that the card rooms that might possibly close would be the ones that do not provide healthcare, because they are financially already teetering to begin with. The provision for the health care act, obviously has some penalties if business owners do not offer health care for the employee to participate. For every single employee that does not participate in what is offered, he thought the expense is a \$2,000 tax that licensees would pay in per employee. So even if they opt not to go with coverage, it does expense to the facility no matter what type of coverage they can offer. And it is so convoluted he really did not know the outcome.

Chair Ellis asked for further comments, there were none.

Approval of Minutes – May 10, 2012 Regular Commission Meeting

Commissioner Amos made a motion seconded by **Commissioner Gray** to approve the minutes from the May 10, 2012, Commission meeting as submitted. *Vote taken; the motion passed with three aye votes.*

New Licenses and Class III Certifications

Deputy Director Trujillo reported there were no unusual items noted and staff recommends the Commission approve all new licenses and Class III certifications listed on pages 1 through 29.

Commissioner Gray made a motion seconded by **Commissioner Amos** to approve the new licenses and Class III certifications listed on pages 1 through 29. *Vote taken; the motion passed with three aye votes.*

RULE UP FOR FINAL ACTION

Petition From the Public: ShuffleMaster, Inc. – Allowing carryover pots for house-banked card games

a) Amendatory Section: WAC 230-15-040 Requirements for authorized card games

Assistant Director Harris explained that a carryover pot is an optional pot that accumulates as the dealer and participating players contribute to the pot. The winner is not necessarily determined in one game, as there is a minimum qualifying hand to win. The pot cannot be carried over for more than ten games and participants must include at least one player and the dealer competing for the highest winning hand. The individual game rules will determine how the pot is distributed; what percentage goes where. The current WAC rule requires that players'

win or loss be determined during the single course of a card game. The petitioner's proposal creates an exception to this for a carryover pot and it will be up to the licensees to ensure the pot is not carried over more than ten times. The petitioner also indicated that Washington would be the first state where they would introduce the game with this carryover pot. Staff may receive complaints from players that more than ten rounds went by before the funds were awarded, or that the funds were awarded incorrectly, which would require staff to review surveillance tapes. Included in the agenda packet is staff proposed Amendment #1 that adds language to clarify that if the pot is not won after ten games, it will be divided among the players and the dealer or, if the game rules allow it, just the players. The petitioner said they would be fine with this clarification. Staff received one letter of support and one letter with questions that are included in the Commission meeting packet. Staff recommends final action. The petitioner is present and requested an effective date of August 13, 2012 because they stated that the card room operators are anxious to offer the new game. Staff does not object to that date because staff training will be minimal.

Chair Ellis asked if there were any questions of AD Harris. Hearing none, he asked if the representatives from Shuffle Master would like to address the Commission.

Mr. Ryan Yee responded he was the associate product manager for table games for Shuffle Master, Inc. Along with him was Kerrie Kimball, product compliance analyst. They are requesting approval of this bet so that this can go forward and start implementation into other games that could be offered to ShuffleMaster customers within this great state of Washington.

Chair Ellis thanked Mr. Yee and Ms. Kimball, and asked if there were any questions from the public. Hearing none he closed the public hearing.

Chair Ellis asked Administrator Amy Hunter if staff proposed Amendment #1 included new language that has not previously been included in the petition; the reference to how the carryover pot should be disposed of if it has not been won by the tenth game. Chair Ellis asked if the new language was not part of the original petition, and he gathered that it was consistent with the Administrative Procedures Act that the Commission may take action on the petition, as amended, without a new filing and new information to the public when a petition has been changed. **Ms. Amy Hunter** clarified the language was up for discussion at the May meeting, but staff did not feel that it was substantive enough to require a new filing, and the petition was up for discussion for consideration. The petition was now up for final action. **Chair Ellis** apologized as he had forgotten that it was in the May minutes, and asked if there were any further questions or comments about this petition. Hearing none, he asked for a motion.

Director Day asked the Commission to act on the effective date. **Commissioner Gray** replied August 13, 2012. **Commissioner Amos** asked AD Harris if he approved the August 13, 2012 date or should the Commission make it September 1, 2012. **Assistant Director Harris** replied that either date was fine, and the implementation for training staff was very minimal. **Commissioner Amos** agreed to include in the motion the effective date of August 13, 2012.

Director Day replied the effective date must be at least 31 days after filing. **Ms. Hunter** affirmed the date should be close to August 13, 2012. **Chair Ellis** agreed.

Commissioner Amos made a motion seconded by **Commissioner Gray** that the Commission to approve the Petitioner's Amendment #1 to WAC 230-15-040 to be effective 31 days after adoption. *Vote was taken; the motion passed with three aye votes.*

RULE UP FOR DISCUSSION

Petition From the Public: Rockland Ridge Corp. and Galaxy Gaming – Allowing “envy” and “share the wealth” “bonus features” to be connected to multiple tables of various card games in a house-banked card room.

- a) **Amendatory Section: WAC 230-15-040** Requirements for authorized card game
- b) **Amendatory Section: WAC 230-15-685** Restrictions on progressive jackpots

Assistant Director Harris reported the petitioner is requesting to connect “envy” and “share the wealth” bonus features between different card games and different tables. This item is on the agenda for discussion again to update Commissioners on the status of the review of the petitioner's equipment they submitted. Initially staff believed that the review would be completed in time for the August Commission meeting, unfortunately it was discovered partway through the review process that the petitioner had submitted an incorrect version of the system. Because of this staff will require additional retesting, and will most likely not be available until the September Commission meeting. Also at the May Commission meeting the petitioner stated that their system was currently operating in two tribal casinos in California. After that meeting they clarified that it was only being operated at one tribal casino in California. Staff contacted the Colusa Tribal Casino in Colusa, California. They operate only ten house-banked card games and six of those are Galaxy Gaming games. They started the mega share system in January 2012 across two Emperor's Challenge tables, and in April they added four additional Galaxy Gaming games; three Lucky Ladies and a Deuces Wild to the system. They are not using the electronic notification portion of the game because it is such a small casino. When a winning triggering event occurs, the pit boss just makes an announcement. They said during that period of time they only had one winning triggering event, and nobody won a prize because they did not have any wagers out there. They did say they have not experienced any problems with the system.

Chair Ellis asked if there were any questions of AD Harris, hearing none, he asked if the petitioner would like to address the Commission, no one stepped forward and the petition was closed for public hearing.

Director Day asked if the Commissioners would like to continue to have this up as a discussion item, or hold it and then bring it back once the testing has been completed, rather than have it on each month's agenda. **Chair Ellis** asked if any of the other Commissioners had comments on those alternatives. **Commissioner Amos** replied he thought it was a good idea. **Director Day** affirmed the petition would be brought back after testing was completed. **Chair Ellis** agreed and moved to the next item on the agenda.

RULES UP FOR DISCUSSION AND POSSIBLE FILING

Staff Proposed Rule Change – Members-only Raffle – 2012 Legislation

a) Amendatory Section: WAC 230-06-020 – Restrictions on alcohol as prizes

Administrator Amy Hunter reported the proposed rule change was only a one-word rule change requesting striking the word “unlicensed”. The reason staff is proposing this is because under the law that passed in the 2012 session, if a nonprofit organization now wants to have a members-only raffle where only members of the organization are participating in the raffle and a limited number of guests, they can now award alcohol as a prize. If they want to go over the \$5,000 threshold, which is the usual threshold for where nonprofits either need a license or do not need a license, they can now still do that, but they would have to get a license from the Commission in order to do that, and this is why staff are proposing striking the word “unlicensed” out of that particular section. Ms. Hunter stated this will only impact a very small number of licensees because if nonprofits are not doing the members-only raffles with that limited prize, they would not be impacted, and this was the reason it took legislation, because of RCW 9.46.0315. There was a nonprofit Eagles group that had been trying to raise money for a hospital and had run into this barrier, and that is why they had pursued getting the law changed. At this time staff recommends filing.

Chair Ellis asked if there were any questions, hearing none he called for a motion to accept the amendment for further discussion and possible filing.

Commissioner Gray made a motion seconded by **Commissioner Amos** that the Commission accept this petition for filing and further discussion. *Vote taken; the motion passed with three aye votes.*

Petition from the Public: Patrick Tompkins – Allowing a description or actual photograph of pull-tab merchandise prizes to be displayed by the flare, rather than the prize itself

a) Amendatory Section: WAC 230-14-095 – Displaying prizes

Deputy Director Trujillo reported that Petitioner Patrick Tompkins was requesting an amendment to WAC 230-14-095 that if a punchboard or pull-tab operator has security concerns about displaying a merchandise prize, they could display a photograph and description near the pull-tab flare. His suggested language also requires that the prize would be stored on-site and available for immediate viewing if a customer asked for it. This is a follow-up to our February 2012 meeting in which Mr. Tompkins did bring forth a similar petition. That petition was denied for lack of a motion because of a potential RCW conflict with the wording in the petition that staff brought to the Commissioners attention. At that meeting staff was also given additional instructions to work with Mr. Tompkins to seek an alternative that might eliminate the potential conflict. Unfortunately staff and the petitioner were not able to agree to one another.

The newly proposed language would add a new section, Section 2(d), which says to use an accurate description or photograph of the prize in plain view of, or immediately adjacent to the flare if operators choose not to display the merchandise prize due to security concerns such as

theft or accidental damage. It further adds that merchandise prizes must be stored on the premises and available for immediate viewing. The newly added language is indicated in bold type to distinguish it from the previous language brought forward at the February Commission meeting. WAC 230-14-095 does govern how an operator may display wrapped merchandise or prize. Subsections (a), (b) and (c), do list some exceptions to the current WAC. Subsection (a) governs how an operator can display a wrapped merchandise prize, with a “surprise” prize. Deputy Director Trujillo said he did not quite know how to say that and still sound intelligent while quoting the WAC. Subsection (b) has to do with displaying large merchandise prizes, and (c) talks about how to deal with perishable items. Mr. Tompkins does say in his rule petition that his petition will promote business and prevents unnecessary losses due to theft or accidental damage.

Staff advised current stakeholders of the petition by letter and e-mail. Staff also informed our followers via Twitter, in which there were over 900 contacts made. Having advised licensed stakeholders, staff has not received any opposition to Mr. Tompkins petition. Deputy Director Trujillo shared some of the statements supporting the proposed rule change. Jacqueline Ferrell representing, six licensees, said she thought it was an outstanding idea; much easier for an operator to display pictures in an effort to save space and increase value. Another statement received was from Dianne Janis, Pioneer Tavern, who said this would be a good change as long as the merchandise was kept on the premises for customers to look at when requested. In smaller establishments there was a space constraint. The third comment that staff received was from Jim and Mary McKellar of Tumbleweeds Tabs, a licensed distributor, who thought it was a great idea for selling and using merchandise on an operator level. The cost of new and smaller items to appeal to players could be stolen when the bartender is not watching. The fourth statement in support of the petition was from Douglas Grandstrand, Bill’s Place, a punchboard and social card room licensee, who said this was a very practical solution to address a problem of limited space behind the bar where the merchandise must be currently displayed.

Deputy Director Trujillo stated that presently staff does oppose the rule change because it does appear to conflict with RCW 9.46.110, which is included in the Commission packet. In considering whether or not to file the petition for further review, staff recommends contrasting that RCW with the proposed language. Mr. Tompkins is present.

Chair Ellis asked if there were any question for Deputy Director Trujillo, hearing none he asked Mr. Tompkins to address the Commission.

Mr. Patrick Tompkins, Dynamic Pulltab Systems, a company that provides high value merchandise, products such as TVs, tablets and cameras to licensed pull-tab establishments to be used as prizes. Mr. Tompkins stated that this past March he presented before the Commission requesting to amend WAC 230-14-095. At this meeting the Commissioners stated some concerns with the proposed language and asked that staff work with Mr. Tompkins to develop alternative WAC language. Mr. Tompkins and staff worked together to add the following language: Merchandise prizes must be stored on premises and available for immediate viewing. Both staff and Mr. Tompkins were happy with this revised language as of June 21, 2012. Mr.

Tompkins commented that a few days later he received a phone call from Public Information Officer Susan Arland informing him that staff would still recommend that his petition be denied because it was felt that it conflicted with RCW 9.46.110. However he wanted to point out that this WAC currently has three exceptions already built into it, and those three were pointed out by Deputy Director Trujillo. He stated that all he was asking for was a fourth exception be implemented that would allow licensees to use an accurate description or photograph of the prize in plain view. The current requirement to display high value electronic merchandise in plain view, such as Kindle Fire and tablets, created a security risk for theft. The merchandise would still be on the premises, and the player would still be able to see the item on the flare. Mr. Tompkins concluded, he was not trying to hide the product from the customer, nor were they trying to cheat them. He was asking that the amended rule change, which already has three other exceptions, be approved as a common sense approach to displaying high value merchandise on the premises to prevent theft and accidental damage. Thank you.

Chair Ellis commented that he had looked back at the materials, but he wanted to make sure Mr. Tompkins understood that the pivotal issue, as Deputy Director Trujillo indicated in introducing the topic, was the statutory language in RCW 9.46.110(1)(d), which states in pertinent part that all merchandise prizes must be on display within the immediate area of the premises in which any such punchboard or pull-tab is located. That seems to create the problem that Deputy Director Trujillo was describing. **Chair Ellis** asked Mr. Tompkins if he had any suggestion about how to get around, and did he understand that the Commission does not have the authority to revise a statute. **Mr. Tompkins** replied he wanted to remind Commissioner Ellis that there are already three exceptions to this written into the WAC, which was with mystery prizes, perishable goods, and prizes that were too large to fit immediately next to the pull-tabs themselves. **Chair Ellis** responded he would not raise a legal discussion and refer to Commission attorney. But he would suggest that to the extent that any of those three exceptions were inconsistent with the statutory language, and it may very well be that the WAC provision was not valid. But that was the issue of the language that Mr. Tompkins was suggesting. **Chair Ellis** asked again how the Commission would get around the Statute, and was sure Mr. Tompkins understood the problem. The Commission discussed it in February, and hoped that there might be some way to change the statute, and the other Commissioners may feel really was an issue for the Legislature. **Mr. Tompkins** responded it seemed like an extreme measure to have to take it to the Legislature on something that is so practical and so common sense. **Chair Ellis** replied the Commission was sympathetic to the issue.

Senator Margarita Prentice commented that if it were common sense, then Mr. Tompkins ought to be able to get it through the Legislature, as small issues have gone through, and it is not unwieldy. If the issue is just common sense, why not make it legal.

Commissioner Gray thought it made sense to pass the petition, but she thought the Commission had some problems with it.

Chair Ellis asked if any members of the audience would like to address this petition. Seeing none, he closed the public hearing and called for a motion. **Commissioner Amos** commented if

he made a motion, it would be on Mr. Tompkins language in the WAC, but it would still be a problem with the RCW.

Deputy Director Trujillo reminded Commissioner Amos the language that he was referring to would be the petitioner's language. **Commissioner Amos** replied he thought it was from staff in the bold section down at the bottom where it said merchandise prizes must be stored on the premises and available for immediate viewing. If somebody won the prize, they were going to take it anyway. **Deputy Director Trujillo** confirmed the language was the changed language from the February Commission meeting. All of Subsection (d) is underlined, which would be the entire new section, and is part of the petition. This was the language from the petitioner in which he added the segment talking about the merchandise prizes being stored on-site. If Commissioner Amos were to make a motion, it would be on this language, and would be for filing for further discussion. **Commissioner Amos** affirmed. **Deputy Director Trujillo** responded yes, or not to make a motion. **Commissioner Amos** replied he understood exactly how Mr. Tompkins was thinking. But with three exceptions, one of them being a canoe, he did not know why the licensee would allow for a pull-tab with a canoe; only if somebody was energetic and liked to be outdoors. The item would not be put up behind the bar, especially at a smaller establishment, and he understood that, but did not want to end up getting into a battle over this language still being in conflict with the RCWs. **Deputy Director Trujillo** responded this was the present dilemma.

Director Day commented that staff actually applauded Mr. Tompkins's proposal, but the law is so prescriptive about display, which made it very difficult. Staff was not going to justify or unjustify the exceptions. It was what staff would call a surprise prize, or something that was too big, or frozen, or something that actually involves physical limitations. Director Day thought the legislative direction seemed to be pretty clear; display is display, and that was what made it hard to further change that WAC.

Representative Gary Alexander asked if the Commission does decide that it is not going to ask the petition be forwarded for further discussion, would they be open to supporting legislation to amend it so that it would provide for that opportunity to ensure the safeguarding of the prize. **Commissioner Amos** replied he did not have a problem with forwarding the petition for further review. But if the Commission were to end up in a battle, then they would use Mr. Tompkins as a prime sponsor to change the RCW in the Legislature. **Chair Ellis** stated the Commission was going to need a formal position on the matter at some point. But it certainly is consistent with the sympathies of the Commission and staff in the past on this topic. Chair Ellis asked Commissioner Amos if he wanted to make a motion and he replied he did not.

Chair Ellis affirmed there was no motion concerning this petition, and therefore the petition failed for lack of a motion. He pointed out that a statement from the Commission was required as to the reason for not accepting the petition for further discussion. Based on what the Commission had heard and seen, the reason for not accepting the petition was because of the conflict as it appeared to them between the proposed WAC language and the Statutory language

of RCW 9.46.110(2)(d). He asked if that was consistent with the views of the other Commissioners. Commissioner Amos replied yes, and Commissioner Gray affirmed.

Chair Ellis said he was sorry that the Commission was unable to resolve the dilemma.

Other Business/General Discussion/Comments From the Public

Chair Ellis opened the meeting to other business, general discussion, and comments from the public.

Senator Prentice commented that she had been thinking over the concern from Mr. Mena about health care. The Commission does not want to see card rooms go out of business just because of that. There was no formalized structure, and she suggested that Mr. Mena meet, and address his questions, but she did not know what was available to him as a group. The need was obviously there, but then what would be required to be able to cover the employees, and she did not know if there was anything industry-wide. Those were the things Mr. Mena was going to have to ask himself, and would it be better if there were some kind of formal structure in order to get a better deal or not. Senator Prentice suggested there be some kind of loose structure to meet and discuss the options. She would not be in the Legislature enough to help solve this, or to work on it. But it is troubling that card rooms might possibly have to close because the owners cannot do something that is really so necessary.

Mr. Mena responded it was a dilemma because card room owners had really only just started to scratch the surface of what the implications were and he did not think anybody had a very clear picture. My human resources person just recently attended a seminar with our insurance carrier to discuss what these ramifications were and some of the things that came out in that discussion dealt with the requirements of what owners would have to provide. One of the requirements was that all employees working more than thirty hours per week were going to be considered full-time. That implication alone covers quite a bit of our staffing levels. And so when there are one hundred thirty-five employees on average, the impact could probably cover one hundred of those employees. And at that level, he thought that ninety percent of the industry right now covers only their management teams. There was ten percent of the industry that covered further, but of those ninety percent, he estimated at one hundred employees would probably cost upwards of fifteen to twenty thousand depending on the facility per month. Mr. Mena stated he did not know what the solutions were, and he was not certain anybody had really thought of those types of answers yet. But he did know that there were ways to do these things, and I welcome the opportunity to have those discussions, absolutely.

Chair Ellis pointed out the Commission was not the best agency for Mr. Mena to be discussing this with, since Commissioners had just failed a suggestion that they amend the State Statutes. He said the Commission was not in a position to start amending federal law either. There were people in the state, presumably in the Department of Health, and he suggested Mr. Mena contact the Governor's office to ask the question, who could discuss the affect on these small businesses of the federal legislation. They are working on getting ready to set up insurance exchanges at the state level to make policies available to individuals. The federal exemption for small businesses

was set at twenty five employees with probable variations, and there must be many other small businesses in the state that are looking at the same issues.

Mr. Mena said he believed, and it was going to be in the service sector where a lot of this really hits. And that was pretty far reaching set aside the card rooms. Strictly from a business standpoint there is a lot of job impact, and in a downturn recession the way things are moving, this was probably the last thing that needed to have happen in that method. He did not know how to get to the solution, but he did know that it needed to be discussed, and needed to be ferreted out further. The industry is unfortunately a labor intensive industry that was highly regulated, and highly regulated internally. And that is why the industry has so many people that operate these casinos. There were very few of these card rooms that would ever fall under the exemption of staff. **Chair Ellis** recommended again that Mr. Mena start with contacting the Governor's office.

Senator Prentice suggested Mr. Mena speak to Senator Karen Keiser who is knowledgeable on the law and its application to small businesses, and said she would inform Senator Keiser. She commented that the last thing she would want to see was the loss of the card rooms over something like this, and would like to see how to help him stay. **Mr. Mena** thanked Senator Prentice.

Representative Alexander asked if the Commission was doing anything in conjunction with the Liquor Control Board in terms of joint enforcement or joint licensing issues with the Initiative on the new liquor laws. He also asked if the Commission was reaching out to see what could be done in terms of the new establishments acquiring punchboard pull-tabs and other types of gambling licenses, as well as liquor licenses, and were they doing anything to try to help in the process when establishments need both gambling and liquor type responsibilities.

Chair Ellis asked if Representative Alexander was thinking about the new legislation authorizing the sale of bottles of liquor and the Costco initiative. **Representative Alexander** responded that a number of establishments were auctioned and changed ownership, and contracts, and there are new ones sprouting up. He was sure that many of them were also going to be requesting gaming type licenses, as well as in the enforcement area. He stated his question was has there been any kind of discussion about how to more effectively work together between those two areas. **Deputy Director Trujillo** replied that Assistant Director Tina Griffin who has been working fairly diligently with MLS, now BLS, had recently worked heavily with the Liquor Control Board to address some of the items mentioned and has had a lot of success in those discussions. Staff was not quite sure yet, but it did seem fairly positive.

Director Day asked Assistant Director Mark Harris to confirm that the Commission already coordinates law enforcement training with the liquor agency, and as well work jointly on the underage inspections with them, and coordinate when there are shared office possibilities.

Assistant Director Harris confirmed that was true, and he thought most of the items from that initiative pertained to the stores. Most of the liquor stores do not have gambling licenses. Safeway and stores like that who sell liquor just have a crane game license, amusement game,

which is minimal regulation from the Commission standpoint. Most of those places do not qualify for a pull-tab license.

Chair Ellis asked if any other members of the audience that would care to address the Commission. Seeing that no one is stepping forward, he called for a ten minute break at 3:08 p.m.

Default:

Douglas E. Murphy, Class III Employee, Revocation

Ms. Hunter reported Douglas Murphy previously worked for the Snoqualmie tribe for a relatively short period of time, and before that he worked at the Bank of America. Mr. Murphy had made unauthorized transfers of over \$40,000 from certificates of deposit that belonged to customers. In March of 2012 he pled guilty to bank embezzlement, which is a Class B felony. Director Day issued administrative charges to Mr. Murphy by certified mail and regular mail, of which he did receive the certified mail and signed the receipt, which staff received back. The charges notified Mr. Murphy that if he did not respond, a default order revoking his certification would be requested. He did not respond, so he has waived his right to a hearing. Staff recommends the Commission revoke Douglas Murphy's license.

Chair Ellis asked if Douglas E. Murphy was present or anyone representing him in this matter; no one stepped forward.

Commissioner Gray made a motion seconded by Commissioner Amos that the Commission revoke Douglas E. Murphy's license to conduct gambling activities as presented. Vote taken; the motion passed with three aye votes.

Status Update on Payment Plan: Austin L. Moses

Ms. Hunter reported an update on Austin Moses. She explained if Commissioners were at the March Commission meeting or a prior meeting, Mr. Moses name would probably be familiar. Mr. Moses had outstanding court ordered fines and fees that he had not paid. At the March meeting he still owed about \$2,700 and had not made much progress on paying those. The Commission gave him another opportunity to pay those, along with some stern warnings when he was before them at the March meeting. In reviewing the minutes Commissioner Rojecki was very clear with Mr. Moses that the Commission took this matter seriously; they would hope that by May 15 he had everything paid for. Ms. Hunter quoted the minutes; the Commission also expects to see some change from Mr. Moses' behavior to actually pay this debt because he entered into an agreement to pay it off. Commissioner Rojecki asked him if the instructions were clear and Mr. Moses replied yes, he would do the most he could by May 15 and hopefully have it paid off, or most of it. Ms. Hunter reported she thought the payment plan was successful because he had now paid off his debt. Staff will not be pursuing what had been pursuing in March, which was to have his deferral that he was on revoked.

Chair Ellis stated he was concerned; the real agenda item going beyond Mr. Moses was to address what he thought was an unfortunate aspect of his stipulation, which essentially gave him until the end of the one year period to enter into a payment program and to start making payments, and get his fines paid off. In theory Mr. Moses could have reported the day before the end of that year and said he had done as promised, and it would not have violated his stipulation to not have taken action before the end of the year's time. Chair Ellis had been hopeful that there would have been a new procedure for this kind of situation where the card room employee would be required to enter into the payment program early on, possibly within a month or two of the one year period beginning, to make payments pursuant to that plan and not have the entire year to essentially do nothing. He asked if there been any change with regard to that kind of procedure. **Ms. Hunter** replied staff had not had another case of this nature in the past and would note the comment, and make certain that if staff had another case they would take this into consideration so that there would not be as much flexibility. **Chair Ellis** agreed and said technically Mr. Moses was in compliance with his stipulation until he got to the end of the one year period. **Ms. Hunter** agreed.

Chair Ellis asked if there were any questions, there were none.

Other Business/General Discussion/Comments From the Public

Chair Ellis opened the meeting to other business, general discussion, and comments from the public. No one stepped forward.

Executive Session to Discuss Pending Investigations, Tribal Negotiations, and Litigation

Chair Ellis called for an Executive Session at 3:30 p.m. to discuss pending investigations, tribal negotiations, and litigation. He announced that at the end of the executive session, the public meeting would be resumed solely for the purposes of adjourning.

Adjourn

Chair Ellis called the meeting back to order at 3:55 p.m. and immediately adjourned.

Minutes prepared by:

Michelle Rancour, Administrative Assistant